

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 452 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No

5. Whether it is to be circulated to the Civil Judge? No

HAMIRBHAI PANCHABHAI PARMAR

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

MR S.P.DAVE for Respondents.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/03/96

ORAL JUDGEMENT

The order of detention dated 30.12.1995 passed by the District Magistrate, Ahmedabad in exercise of powers conferred on him by sub-section (2) of section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 ('the Act' for short) against the petitioner is the subject matter of challenge in the present petition which is filed under Article 226 of the Constitution of India.

The grounds of detention indicate that CR No.

297/95 is registered against the detenu at Sanand Police Station for contravention of provisions of Bombay Prohibition Act, 1949 and is pending investigation. On the basis of the abovementioned case and material connected therewith as well as on the basis of the statements of ten witnesses, the Detaining Authority came to the conclusion that the detenu is bootlegger within the definition of section 2(b) of the Act and his activities as bootlegger disturbed maintenance of public order. The Detaining Authority, therefore, with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order passed the impugned order of detention.

It is not in dispute that the procedural requirements enjoined by the Act and Article 22(5) of the Constitution have been complied with by the Detaining Authority, the Advisory Board and the State Government.

Several contentions have been urged by learned counsel for the petitioner while assailing the validity of the order of detention. However, it is not necessary to refer to all of them except one which in my opinion merits acceptance. The learned counsel for the petitioner submitted that CR No.297/95 was registered at Sanand Police Station against the detenu for contravention of the provisions of Bombay Prohibition Act, 1949 on September 1,1995. Whereas the Sponsoring Authority completed the recording of statements of witnesses by November 20,1995 which allegedly indicate that the activities of the detenu as bootlegger disturbed the maintenance of public order and thereafter the Detaining Authority passed the order of detention on December 30,1995 and as there is unexplained delay in passing the order of detention same deserves to be set aside. This ground of challenge is raised in para 8 of the petition.

Though the respondents are duly served, no affidavit-in-reply is filed by any of the respondents controverting the statements made in the petition.

In matters relating to preventive detention, delay may occur at three stages :

[1] delay may occur between the prejudicial activities of individual and submissions of the papers by relevant authorities to the detaining authority,

[2] between receipt of papers by the detaining

authority and passing of the order of detention and,

[3] between the impugned order and arrest of the detenu in pursuance of order.

It is well settled that it is obligatory for the Detaining Authority to explain the delay, if any, at any stage and if delay remains unexplained the court may come to the conclusion that the Detaining Authority was not aware to the aspect of immediate need to detain the detenu or that there was no genuine satisfaction of the Detaining Authority as required by the statute.

Reverting back to the facts of the present case, it is evident that CR No.297/95 was registered at Sanand Police Station against the detenu for contravention of the provision of Bombay Prohibition Act, 1949 on September 1, 1995. The Sponsoring Authority completed recording of ten statements by November 20, 1995 which allegedly indicate that the activities of the detenu as bootlegger disturbed the maintenance of public order. Mr.S.P.Dave, learned counsel appearing for the respondents has gone through the file of the Detaining Authority and stated that proposal to detain the detenu was forwarded by the Sponsoring Authority to the Detaining Authority on November 30,1995 and the same was received in the office of the Detaining Authority on the same day. Obviously there is delay between prejudicial activities attributed to the detenu and the purpose which is sought to be achieved by passing the order of detention. The delay in passing the order of detention is not explained by the Detaining Authority. Having regard to the facts and circumstances of the case and more particularly in view of unexplained delay, I am of the view that delay in passing the order of detention has snapped live link between prejudicial activities attributed to the detenu and the purpose which is sought to be achieved by passing the order of detention. Grounds of detention do not indicate that the Detaining Authority was aware about the delay in passing the order of detention. The Detaining Authority did not apply its mind to the aspect of immediate need to detain the detenu and therefore, it will have to be concluded that there was no genuine satisfaction of the Detaining Authority as required by the statute. The impugned order of detention is therefore liable to be set aside and quashed.

For the foregoing reasons, the petition succeeds.
The order of detention dated December 30,1995 passed by

the District Magistrate, Ahmedabad which is produced at Annexure 'A' to the petition is hereby set aside and quashed. The respondents are directed to set at liberty the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs.
